IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 16, 2008 Session

THE GENE AND FLORENCE MONDAY FOUNDATION, INC. v. THE DIOCESE OF EAST TENNESSEE, ET AL.

Appeal from the Chancery Court for Knox County
No. 169257-2 Michael W. Moyers, Chancellor

No. E2008-00134-COA-R3-CV - FILED DECEMBER 29, 2008

The sole issue in this case is whether The Gene and Florence Monday Foundation, Inc., ("the Foundation") has standing to challenge a 2006 sale of property by The Diocese of East Tennessee ("the Diocese")[1] and St. James Episcopal Church ("the Church"). The property was conveyed in 1987 by Mr. Monday and his wife, Florence Monday (collectively "the Mondays"), to the Diocese and the Church through a "Deed of Gift and Assignment of Leases" ("the Deed of Gift"). After the 2006 sale, the Foundation, which was not in existence at the time the gift was made, sued the Diocese, the Church and others, claiming that the price paid for the property was too low and that other conditions of the gift had not been met. We affirm the trial court's judgment. In so doing, we hold, as did the trial court, that the Foundation does not have standing to bring this suit.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J, and D. MICHAEL SWINEY, J., joined.

D. Scott Hurley and Ryan N. Shamblin, Knoxville, Tennessee, for the appellant, The Gene and Florence Monday Foundation, Inc.

Michael S. Kelley, Knoxville, Tennessee, for the appellee, HGC Limited Partnership.

Sarah Y. Sheppeard, Knoxville, Tennessee, for the appellees, The Diocese of East Tennessee and St. James Episcopal Church of Knoxville.

W. Tyler Chastain, Knoxville, Tennessee, for the appellee, Kerry M. Sprouse.

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[1] An entity of the Episcopal Church.

OPINION

I.

In 1987, the Mondays executed the Deed of Gift. The subject of the gift is commercial property located at the northwest corner of the intersection of Kingston Pike and Northshore Drive in Knoxville. The Deed of Gift also assigned leases pertaining to the property. The property conveyed was subject to a $660,000 mortgage.

The purpose of the conveyance, as stated in the Deed of Gift, was to provide relief to persons in need through "good, worthwhile, humanitarian, Christian causes . . . ." The Deed of Gift further provides that

> [t]he net income from said properties is to go to worthwhile Christian charities, selected by [the Diocese and the Church], helping the poor, humanitarian charities, church groups or helping Christian causes, helping others in getting food, shelter, clothing and religious work.

The Mondays made suggestions in the Deed of Gift as to the types of projects and gifts that they had in mind, but they made clear that they were not dictating to the Diocese or the Church the details of handling any monies resulting from the gift except to admonish them to "be very careful, prudent, and investigate and determine where the income of this property will do the very most good and help the most people."

After the Mondays' deaths and pursuant to the will of William Eugene Monday, Jr., who was known as Gene Monday, the charitable foundation that is the plaintiff in this lawsuit was created. The complaint avers that the Foundation "is a charitable foundation formed pursuant to the Last Will and Testament of William Eugene (Gene) Monday, Jr." The complaint further avers:

> [O]n or about, June 1, 1987, [the Mondays] executed a certain instrument titled [the Deed of Gift] pursuant to which certain real property located in Knox County, Tennessee was conveyed to Defendants [the Diocese] and [the Church]. Additionally, certain leases pertaining to the referenced real property were assigned by [the Mondays] to said Defendants in that same conveyance. . . .

The Foundation attached a copy of the Deed of Gift to the complaint. The complaint also notes that the subject document is recorded in the office of the Register of Deeds for Knox County.

Some years after the Deed of Gift was made, the Diocese and the Church wished to sell a *portion* of the property that was the subject of the Deed of Gift. In the complaint, the Foundation avers:

> On or about January 30, 1997, Defendants [the Diocese] and [the Church] approached Robert W. Monday, William Eugene Monday

> [III] and James Stephenson Monday the representatives of the [Foundation] and residual heirs to the Estate of William Eugene Monday (hereinafter "the Monday Heirs") about consenting to a sale of a portion of the property that was conveyed pursuant to the Deed of Gift. The transaction proposed by the Defendants was, beyond question, objectively an "outstanding transaction"[2] and the Monday Heirs executed a consent to the sale of a portion of that real property and released the deed restrictions and conditions as set forth in the Deed of Gift.

(Footnote added.) The Consent to Sale of Real Estate and Release of Deed Conditions executed by the three Monday heirs was also made an exhibit to the complaint. The complaint further avers:

> In early May, 2006, the Monday Heirs were contacted by representatives of [the Diocese and the Church], and a meeting was requested by representatives of the Defendants. At that meeting, representatives of the Defendants informed the Monday Heirs that the Defendants wanted the Monday Heirs to consent to an additional sale of the remaining real estate and to execute a Release of Deed Restrictions and Conditions pertaining to all of the reminder of that property which originally had been conveyed by Plaintiff [3] to [the Church] and [the Diocese].
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> * * * * *
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> At the meeting as referenced above, the Monday Heirs, as representatives of [the Foundation] and as heirs of . . . the Estate of William Eugene Monday, met with representatives of the Defendants. During the meeting, the Monday Heirs were presented with a form entitled "Consent to Sale of Real Estate and Release of Deed Restrictions and Conditions" pertaining to the remaining property. Representatives of the Defendants requested that the Monday Heirs execute the consent but the Monday Heirs refused to do so, pointing out to representatives of the Defendants that the transactions were at substantially less than market value; that the proposed transaction would most certainly deviate from the expressed intent of William Eugene Monday, Jr. and that the proposed transaction would depart from the express language set forth as a condition and restriction in

[2] The Deed of Gift directed that any subsequent conveyance of the property was to be an "outstanding transaction."

[3] The Deed of Gift, which was attached to the complaint, shows that the gift was made by "William Eugene Monday, Jr. and wife, Florence Stephenson Monday" and not "Plaintiff." This is not in dispute. The reference in the complaint – "conveyed by Plaintiff" – is apparently the error of the author of the complaint.

> that Deed of Gift from [the Mondays] to Defendants [the Diocese] and [the Church]. Accordingly, the Monday Heirs refused to execute the proposed Consent to the Sale of Real Estate and further refused to release the deed restrictions and conditions.

(Footnote added.) A copy of the unsigned Consent to Sale of Real Estate and Release of Deed Restrictions and Conditions was made an exhibit to the complaint. Subsequent to the meeting between the Monday heirs and the defendants, the Diocese and the Church went forward with the sale of the remainder of the property to HGC Limited Partnership and Kerry M. Sprouse for $500,000.

The Foundation brought suit against the Diocese, the Church, HGC Limited Partnership and Kerry M. Sprouse ("the defendants"). The defendants filed a Tenn. R. Civ. P. 12.02(6) motion to dismiss. The trial court granted[4] the motion on the basis that the Foundation lacks standing to file the subject lawsuit. The Foundation appeals.

II.

The Foundation states the issue as follows:

> Whether the trial court erred in finding that [the Foundation] lacked standing to file the underlying complaint in [the] present action.

III.

The issue presented for review in this case involves a question of law. On appeal, the conclusions of a trial court on issues of law are reviewed *de novo* with no presumption of correctness. ***Jordan v. Knox County***, 213 S.W.3d 751, 763 (Tenn. 2007) (citing ***Kendrick v. Shoemake***, 90 S.W.3d 566, 569 (Tenn. 2002); ***Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn. 1995)). When our review is entirely *de novo*, no deference is accorded the conclusion of law made by the trial court. ***Id***. (citing ***S. Constructors v. Loudon County Bd. of Educ***., 58 S.W.3d 706, 710 (Tenn. 2001)). The application of the law to the facts is also subject to a *de novo* review; again, no presumption of correctness attaches to the trial court's legal judgment. ***Id***. (citing ***State v. Thacker***, 164 S.W.3d 208, 247-48 (Tenn. 2005)).

Our protocol when evaluating whether the trial court property granted a Tenn. R. Civ. P. 12.02(6) motion to dismiss is as follows:

> A Tenn. R. Civ. P.12.02(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency

[4] Before ruling on the motion, the trial court granted the Foundation 90 days within which to determine if the Tennessee Attorney General wished to intervene in the case. *See* Tenn. Code Ann. §§ 35-13-110 (2007). When the Attorney General declined, the trial court granted the motion.

> of the complaint, not the strength of a plaintiff's proof. Such a motion admits the truth of all relevant and material averments contained in the complaint, but asserts that such facts do not constitute a cause of action as a matter of law. In ruling upon a motion to dismiss, courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true. The motion to dismiss should be denied unless it appears that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. In considering this appeal from the trial court's grant of the defendants' motion to dismiss, we take all allegations of fact in the plaintiff's complaint as true, and review the lower courts' legal conclusions *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d).

Leggett v. Duke Energy Corp., No. W2007-00788-COA-R3-CV, 2008 WL 4756653, at *2-3 (Tenn. Ct. App. M.S., filed October 29, 2008) (citing ***Bell v. Icard***, 986 S.W.2d 550, 554 (Tenn. 1999)).

IV.

A.

The trial court dismissed this case predicated on its finding that the Foundation lacks standing to sue. In this appeal, in addition to asserting that the Foundation did not have standing to sue, the defendants also argue, in the alternative, that the allegations in the complaint do not present a justiciable controversy. We do not address this alternative defense because we agree with the trial court that the Foundation lacks standing.

B.

The doctrine of standing is employed to determine whether a plaintiff is entitled to judicial relief. ***Wood v. Metro. Nashville & Davidson County***, 196 S.W. 3d 152, 157 (Tenn. Ct. App. 2005) (citing ***Knierim v. Leatherwood***, 542 S.W.2d 806, 808 (Tenn. 1976); ***Garrison v. Stamps***, 109 S.W.3d 374, 377 (Tenn. Ct. App. 2003)). The issue is whether the plaintiff has alleged a sufficiently personal stake in the litigation to warrant judicial intervention. ***Id.*** (citing ***SunTrust Bank v. Johnson***, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000); ***Browning-Ferris Indus. of Tenn., Inc. v. City of Oak Ridge***, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982)).

To demonstrate standing, a plaintiff must establish: "(1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is one that can be addressed by a remedy that the court is empowered to give." ***Id***. at 157-58 (citing

City of Chattanooga v. Davis, 54 S.W.3d 248, 280 (Tenn. 2001); ***In re Youngblood***, 895 S.W.2d 322, 326 (Tenn. 1995); ***Metro. Air Research Testing Auth., Inc. v. Metro. Gov't***, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992)). *See also* ***Lynch v. Jellico***, 205 S.W.3d 384, 395 (Tenn. 2006); ***Am. Civil Liberties Union of Tenn. v. Darnell***, 195 S.W.3d 612, 620 (Tenn. 2006).

C.

The initial question before us is whether the Foundation has sustained a distinct and palpable injury. The Foundation's brief is short and to the point on this issue. The Foundation argues that "as a charitable organization devoted to the goals set forth in the Deed of Gift, [it] would be the natural and fitting recipient under the terms of Subsection (2) of the Deed of Gift and therefore has standing to challenge the activities of [the Diocese] and [the Church]." Subsection (2) of the Deed of Gift provides:

> The net income from said properties is to go to worthwhile Christian charities, selected by [the Diocese and the Church], helping the poor, humanitarian charities, church groups or helping Christian causes, helping others in getting food, shelter, clothing and religious work. Any surplus from said properties is to be reinvested in other real estate, or Bonds, or other good investments which will bring in a good net return or increase in value, or same could be investments in buildings or land that will be solely used for charitable purposes. These investments in the future are to be for like charitable causes and become added [assets] and become part of all owned and operated properties for charitable purposes.

The Foundation then argues the injury sustained by it is that the sale "significantly reduced the funds available to fund 'worthwhile Christian charities, selected by [the Diocese and the Church], helping the poor, humanitarian charities, church groups or helping Christian causes, helping others in getting food, shelter, clothing and religious work.' " The quoted language between the single quotation marks is from the Deed of Gift.

In ruling upon a motion to dismiss, we construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true. ***Leggett***, 2008 WL 4756653 at *2. In this case, the only allegation of fact we find in the complaint concerning the nature of the Foundation is that the Foundation "is a charitable foundation formed pursuant to the Last Will and Testament of William Eugene (Gene) Monday, Jr." Taking this allegation as true, we know only that the Foundation is a charitable one. We do not know its corporate purpose, what its activities are or whether it is, in the words of the Deed of Gift, a "worthwhile Christian charit[y]" that could be selected under Subsection 2 of the Deed of Gift as a recipient.

Although the Foundation argues in its brief that it is "a charitable organization devoted to the goals set forth in the Deed of Gift" there is no allegation in the complaint to that effect. Similarly, there are no allegations in the complaint that the Foundation, in the words of its brief, "would be the natural and fitting recipient under the terms of Subsection (2) of the Deed of Gift."

The Supreme Court has offered guidance concerning how to assess whether a particular plaintiff is entitled to an adjudication based on the particular claims asserted in the complaint. ***Darnell***, 195 S.W.3d at 620 (citing ***Brentwood v. Metro. Bd. of Zoning Appeals***, 149 S.W.3d 49, 56 (Tenn. Ct. App. 2004)). The Court says that "[s]pecifically, courts should inquire:

> Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?

Id. at 620-21 (citing ***Allen v. Wright***, 468 U.S. 737, 752 (1984)).

In ***Darnell***, the Supreme Court found, among other things, that the trial court correctly held that there was no "injury in fact" to meet the first prong of the test for standing when plaintiffs alleged in their complaint that they were injured because their ability to "lobby an uninformed electorate" had been hindered by an act of the Secretary of State and there was no allegation or proof that they had "put forth an actual lobbying effort . . . ." ***Id.*** at 621. Similarly, in this case, the Foundation argues that it would be a fitting recipient of monies generated by the income from the property that was the subject of the Deed of Gift, but fails to allege that the Foundation had ever applied for or been a recipient of any of the monies generated by the Deed of Gift.

Here the injury is too abstract to be cognizable. In effect, the Foundation argues that it would have been injured had it applied for a grant and then discovered that, due to the "low" selling price of the property, less money was available for the Church and the Diocese to distribute. In this case, the Foundation's argument concerning injury is based on several levels of conjecture. First, we must assume that the Foundation is a charitable organization devoted to the goals set forth in the Deed of Gift. Then we must assume that, hypothetically, if the Foundation had applied for a charitable distribution from the Church and the Diocese, the Foundation would have been selected as a recipient. Finally, we must speculate, as the Foundation does, that, over time, beneficiaries of funds from the property that was the subject of the Deed of Gift will receive less money from the distribution of the income from the proceeds of the $500,000 sale than from the distribution of the net income from leases on the property.

This court has held that "[t]he first indispensable element that must be shown in order to establish standing is that the plaintiff suffers a 'distinct and palpable injury: conjectural or

hypothetical injuries are not sufficient.'" ***Tenn. Dept. of Human Servs. v. Priest Lake Comty. Baptist Church***, No. M2006-00302-COA-R3-CV, 2007 WL 1828871, at *6 (Tenn. Ct. App. M.S., filed June 27, 2007) (quoting ***Darnell***, 195 S.W.3d at 620). In this case, the Foundation has simply failed to allege an injury in fact.

Having held that the Foundation has failed to allege that it has suffered an injury in fact, there is no need to address the second and third prongs of the test for standing.[5] Nor is it necessary to address, and we do not address, the merits of the Foundation's claims against the defendants. The primary focus of an inquiry as to standing "is on the party, not on the merits of the claims." ***Mayhew v. Wilder***, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001) (citing ***Valley Forge Christian College v. Am. United for Separation of Church & State, Inc***., 454 U.S. 464, 484 (1982); ***Flast v. Cohen***, 392 U.S. 83, 99 (1968)). A plaintiff's standing does not depend on the likelihood of success on the merits. ***Id***. (citing ***MARTA v. Metro. Gov't***, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992)). This case is before us on a motion to dismiss and our holding is narrowly limited to the issue of standing based upon the facts as alleged in the complaint.

V.

We affirm the trial court's decision that the Foundation does not have standing to sue. Costs on appeal are taxed to The Gene and Florence Monday Foundation, Inc. This case is remanded for collection of costs assessed below, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE

[5] Citing Tenn. Code Ann. § 35-13-110, the defendants argue that the "Attorney General of the State of Tennessee is the only person with legal standing to bring an action in these circumstances." The Foundation does not address this argument and we do not find it necessary to decide this issue in order to determine whether the Foundation has standing in this case.